Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

October Term, 1997

LONGINUS YEN
On Behalf of Himself and All Others Similarly Situated,
Petitioner,

vs.

National Labor Relations Board (U.S.A.),

and

Pacific Culture Enterprise.
d/b/a The China Press,
Respondents.

On Petition For Writ Of Certiorari
To The United States Court of Appeals
For The Second Circuit

PETITION FOR A WRIT OF CERTIORARI

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92 pp

I. QUESTIONS PRESENTED FOR REVIEW.

I. The National Labor Relation Board performs its duties under the Congress' Commerce Clause and National Labor Relations Act. Congress delegated to the Agency certain powers that can be used in all unfair labor practice cases. These principal powers have to do with investigations and hearings. A case, after an investigation, issued a complaint and ordered of an evidentiary hearing. The NLRB could on abstract or hypothetical question to "waive or deny" the hearing without the Administrative Law Judge approval ?

II. The NLRB's Regional Director in the execution of his duty with the official power "Out of the hearing" under Congress' Commerce Clause and National Labor Relations Act gave an advisory opinion, which gave advice about particular legislative or executive action, that is a "State" action ? or is it applicable to private as well as state conducted "State Action" ? The "Action" under "Motive" with "Motion" , Fraud, "No judicial review", "No jurisdictional nexus" with "Public function" doctrine and "nexus" doctrine deprived a citizen's **Civil Rights** (**Fundamental Right**) ***Access to court*** and infringed upon a citizen's civil liberties and properties interest on the Federal Government interest with free override. Does the NLRB have the power or the authority to do such injustices on a private citizen?

II. PARTIES TO THE PROCEEDING

The petition is Longinus Yen only.

The respondent is the National Labor Relations Board
Margey E. Lieber,
Assistant General Counsel for Special Litigation,
Eric G. Moskowitz,
Deput Assistant General Counsel for Special
Litigation,
Danise F. Meiners,
Anttorney, Special Litigation Branch,
National Labor Relations Board, Washington, DC.

And,

Pacific Culture Enterprise, Inc.,
d/b/a The China Press

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For The Second Circuit

PETITION FOR A WRIT OF CERTIORARI

The Petitioner Longinus Yen (Pro Se) respectfully pray that a writ of certiorari be issued to review the summery order and denied a motion for rehearing of the United States of Appeals for the Second Circuit entered in the above-entitled proceeding on March 7, 1997. The petition for rehearing and rehearing en banc was denied on March 17, 1998.

V. OPINIONS BELOW

The opinion of the Court of Appeals for the Second Circuit is reported and is reprinted in the Appendix, p.1a, infra.

The Order of decision of the United States District Court for the Southern District of New York has not been reported. It is reprinted in the appendix hereto, p.17a, infra.

The Opinion of the National Labor Relations Board, Office of the General Counsel, Washington, D.C. has not been reported. It is reprinted in the appendix, p. 20a, infra.

The Advisory Opinion of National Labor Relations Board, Region 2 , New York Office has not been reported. It is reprinted in the appendix, p. 25a, infra.

The Order of decision of New York State Unemployment insurance Appeal Board has not been reported. It is reprinted in the appendix hereto, p. 42a, infra.

VI. BASIS FOR JURISDICTION IN THIS COURT

The judgment of the United States Court of appeals for the second circuit was entered on March 7, 1997. A petition for rehearing, with suggestion, according the Federal Rules of Appellate procedure. #48 "Master : appoint a special master..." for rehearing, was 130 days later denied on March 17,1998.

The Federal Court of Appeals for second Circuit may not found as following :

A full evidentiary hearing was canceled for unknown reasons with no "notice of motion" and no further notices of

rescheduling, no judicial review ,only the NLRB's Regional Director with his duty given reasons, there is concern with the "Freedom of speech" interrupted by a policeman in the execution of his duty without due process. And the unfair labor practice case by officer's mandate to withdraw, which the procedural limit with no jurisdictional nexus that the petitioner's civil rights and private liberties totally deprived by the National Labor Relations Board's officer's ***"State Action"*** with "Public function" and "NEXUS" – The significance of state involvement.

To deny a full evidentiary hearing with Constitutionally impermissible reasons when it is the government's duty to open that is worst, evil's "State Action."

The petitioner's liberties and properties interest are deprived with NO full evidentiary hearing ("state 'non' action") only by the National labors Relations Board officer's "Motive" to enforcing (state action) that is total no due process of law.

For instance, ***Out of the hearing***, the NLRB's officer as private conduct which prevents state officials(job for public functions with state interference.) from giving equal protection or due process to others may clearly be prohibited by the Congress.

Similarly, ***Out of the hearing*** that the NLRB's officer as a private conduct which intentionally interferes with rights guaranteed to an individual by federal constitutional provisions other than 14th Amendment may be barred by Congress.

This Court's jurisdiction is invoked under 28 U.S.C. #1254(1) (1992).

VII. STATUTORY INVOLVED

National Labor Relations Act. Section 10. Summary of standard procedures in formal hearings held, before the National Labor Relations Board, in unfair labor practice proceedings and Section 8 in relevant parts. (App. p. 44,48a.)

Code of Federal Regulations, Title 29 – Labor, Subtitle B – Regulations Relating to Labor, Chapter 1 – National Labor Relations Board in relevant parts.(App. p. 49a.)

New York State Labor Law, Article 6, Payment of wages, in relevant parts of Section 191-c, 3. Section 193 1,2. Section 197(App. p. 51a, 52a.)

VIII. STATEMENT OF THE CASE.

I worked at The China Press as a reporter since September 3, 1990. My employer frequently illegally deducted my wages until on April 17, 1995. Total deducted amount is about **$11,704**. I could not afford their tyranny, so I wanted going to organize union to protect my right. Then the China Press fired me.(App. p. 52a.)

The illegal deductions are prohibited by New York State Labor Law.(App. p. 51a, 52a.)

On April 18,1995. The National Labor Relations Broad (NLRB) issued a charge against the employer. Case No. 2-CA-28359. On April 24, at NLRB Region 2 office to report an affidavit. After investigations, on August 9, the NLRB issued a complaint and notice of hearing. (App. p. 38a.)

In the last week before the hearing, the China Press' attorney faxed several letters to my counsel. These letters were written by me to extend an intent to bargain for my job. But

the China Press obscured the evidence to appear that I had actual malevolence and it was defamatory and libel. They misled the NLRB to settle the case. I refused the settlement because it offered only $1000 to $2000 while they owed me approximately $50,000. I also wanted reinstatement in my former job but in an environment with fair labor practices. At that time my counsel asked for my authorization for the settlement. I refused again, I told that the letters that I wrote were within my constitutional right and that the evidence shown was invalid. The counsel then informed me that he would settle with or without my authorization.

On Sunday, June 30, 1996, The China Press proposed the settlement which my counsel recommended but did not sign. (App. p. 34a.)

On Monday, July 1, 1996, one day before the scheduled hearing date, I felt my counsel may have impaired my "private interest" if he accepted the settlement with the China Press. I believe that the action will violate "due process right and fair hearing right to counsel" (Fifth Amendment and Sixth Amendment). On that day I faxed a letter declaring that the letters I wrote were protected by my 1st amendment rights and that I was going to court for a hearing to see whether my words were protected was also my right. The Regional Director of the NLRB has no authority to deem nor declare what I wrote was not protected by the Constitution.(App. p.60)

The scheduled hearing date was on **Tuesday, July 2, 1996 at 9:30AM.** The court was located at 26 Federal Plaza, Room 3614, New York, New York. On the day, when I arrived at the court no counsel there, no court clerk there, no Judge there, only me. I found out that my hearing was canceled. I was surprised. Who has the power and ability to cancel the hearing ? No one told me that the hearing was canceled. There were no further notices of rescheduling. Next

door, there was the NLRB's Region 2 office. I had a receptionist there to sign a paper confirming I came to the court. (App. p. 61a.)

In the **Tuesday, July 2, 1996** afternoon I received a letter **dated July 1, 1996**, from counsel that asking me to sign the proposed settlement (The settlement was only signed by my former employer, no officer signed the recommendation). Nothing in the letter even hinted that the hearing was going to be canceled. I was given seven business days to given my position on why the Regional Director should not accept the settlement agreement. (App. p. 34a.)

In settlement, the China Press's President offered me $3,400 to settle the case. According to the NLRB back pay Claimant Identification, I was owed $49,707.09 in back pay and reinstatement, if the employer breached the National Labor Relations Act. I felt they were in a conspiracy and I believe that the procedure was not in due process of the law. (On January 9,1998, I bought the book of "Code of Federal Regulations" Title 29, Labor, then I knew, the NLRB was violation the regulation ; 29 CFR 1, 102.24 (b) All motion for summary judgment or dismissal shall be filed with the Board no later than 28 days prior to the scheduled hearing.)

On July 5, 1996, I sent letter by fax, by mail, by registered mail and by hand. I try to explain "...their equivalent fiction and poetry that totally should be protected under the Constitution...". (It is the second time I declared my First Amendment rights.) (App. p. 32a)

On July 10,1996, a letter (as a mandate) from Regional Director said; (1)The letters are "Physical harm" and "contain obscene language" and "threatening letters". (Pre-judgment and interrupt speech in the execution of his duty.)(2) withdrawing the complaint.(After a scheduled full evidentiary

hearing which with "unknown reasons" was not opened.)(3) approving the proposed unilateral settlement agreement. (Non-Administrative Law Judge and against assertion of a third party's right.) (App. p. 25a.)

I felt that the procedural no due process was illegal, then, I believed that the Regional Director lied to me, so I checked my text book of law for business and found that the letter from the Regional Director is fraud as a result of Express Misrepresentation, there consists of four elements: (a) A false statement of a material fact must be made. (b) The false statement must be made by one who knew it to be false, or by one who made it in reckless disregard of its truth or falsity.(c) There must be an intent to induce the innocent party to act by reason of the false statement.(d) The innocent party must have been induced to make the contract by the false statement.(John D. Ashcroft and Janet E. Ashcroft. College Law for Business, Ninth Edition, Uniform Commercial Code. Pp 35)

On July 22,1996, I wrote an appeal to the General Counsel to defend (third time) my First Amendment right. I asserted that I was the president of a newsletter and I was just asserting my rights. On August 14,1996, letter from The NLRB's General Counsel said; "threatening remark... 'used metaphorically'...such threatening remarks are not protected by the Constitution.....under the National Labor Relations Act,..." The appeal was denied. Then, I decided, to fight for the Constitution of the United States of America.(App. p. 20a.)

On November 6 1996, I received a letter from the Regional Director of the NLRB saying that he has told the China Press the case was closed.(App. p. 62a.)

On January 15, 1997, I received a W-2 form where under my name and Social security number there were paid income taxes. The same day, I sent letters to the China Press a

and copy to the NLRB Region 2 and Washington office that told them; " that S3,034 was reported as wages but no such receipt of the money occurred. Please be informed that any inquiry stating that the money was received will be denied."

On October 10, 1997, The NLRB Region #2 Office mailed a blank piece of paper with two checks issued by the China Press and dated July 1, 1996, with a face amount of 3,167.90. I returned it because was not "legal tender". On October 15, 1997, The Board agent, Esther Morales (possibly through somebody else) delivered to me the same two checks and in doing so broke my mail box. There was also no stamp or meter or any indication that it was mailed by the United States Postal Service. I returned it again and reported it to the National Labor Relations Board's D.C. Office on October 16,1997.(App. p. 63a.)

On November 5, 1997, I received a letter from NLRB's Regional Director that said; "...we have returned the back pay checks to the Employer." On November 13,1997, that one day before I had a hearing in the Federal court of appeals for second circuit that I received a letter from NLRB's Washington Office, Assistant General Counsel, Celeste J. Mattina said; "...due to circumstances beyond the Region's control." answer the Questions as fail to perform the obligations of contract's assumed is legal right.(App. p. 64a)

The case beginning on April 18, 1995, ending at November 5, 1997 as a jocularity, as to the National Labor Relations Act a lie, where under the Act., labor as no civil right to hearing, no right to "Free speech", the properties(working rights) held by officer which under their mind.

I believe that the State Action goes against the Civil Rights from Amendment XIV and XIII, private rights with

Amendment X, I, and V. and Article I, section 10, The Contract Clause.

IX: REASONS FOR GRANTING THE WRIT

The Congress delegated to the Agency certain powers that can be used in all cases. These are principal powers having to do with investigations and hearing.

The National Labor Relations Board under The Congress' Commerce Clause and The National Labor Relations Act is to uphold the unfair labor practice case which under Constitution protects the Civil rights and liberties.

The National Labor Relations Board after receiving the case, only notice of the charge and needed some kind of opportunity to respond before withdrawal of the complaint, **not** a full evidentiary hearing of the sort found necessary in the case.

The procedures to which the case was **entitled** were to be judged by independent constitutional standards, not merely by whether NLRB complied with the state statutory scheme. In this case, The National Labor Relations Board let the scheduled hearing for "Unknown" reasons to be canceled (the hearing never opening) as never happened, there was no further notices of rescheduling.

The "Unknown" may Constitutionally impermissible reasons.

After the scheduled "hearing" (which did not open) the National Labor Relations Board's Regional Director under "mind and spirit" issued a mandate to interrupt the First Amendment's Right, "of Free Speech" in the execution of his duty which is the fundamental right which I applied to the

court before, then, where not only prohibited the speech, but also misused the official power to withdraw the unfair labor practice's case complaint. They were against the assertion of my **third party's right** before the court to discuss the reinstatement and the employer back pay, than with "freedom from arbitrary adjudicative procedures" to approval unilateral settlement without Administrative law judge approved.

This Case No Other Standard Found Workable.

The petitioner trying to analyze the "hearing" is the point of the balance to scale even the public liberty and the civil right to equal protection(Amendment XIV) and (Amendment V) due process the civil rights and private liberties and properties interest. That the hearing "waiver" by an "unknown" reasons, that to let the state action is totally by the "Motion". then, "No Judicial review" and "No jurisdictional nexus" which all of the action is violation of the Tenth Amendment. "The power not delegated to the United States by the Constitution, nor... or to the people."

The power of Civil Rights are the foundations of citizenship which under Fourteenth Amendment protects the individual's, private party's Civil liberties and the properties. I believed it to be Constitutionally impermissible reasons to waiver a hearing, a private persons civil rights, civil liberties and property has been totally infringed .

I

This case Raises Important Federal Questions Because the Federal court of appeals for second Circuit's Decision has the Effect of Foreclosing Takings Claims by workers' in heavily regulated industries.(Tenth Amendment's with "Motion", No Judicial review, No Jurisdictional nexus' State action)

In this case it is found that the National Labor Relations Board (NLRB) under Congress' Commerce Clause and National Labor Relations Act have held the unfair labor practice case to protect public liberty. The NLRB waived the scheduled hearing, then the officer with general police power held "motive" to override, and went beyond the labor's liberties and property that not only violate the Tenth Amendment. As the followings ; (a) No judicial review / No jurisdictional nexus. (b) Mandate with as arbitrarily and unfair as it wishes. (c) Escape the problems. (d) To impose significant due process barriers. (e) Against a private party. Also violate the Fourteenth Amendment's equal protection of the "Law – no hearing, no due process of constitution - between the public liberty and civil rights, private liberties." Two questions need to be decided upon; Is equal protection a claim on the state or a protection against it ? To what extent does our right to equal protection extend into our social and economic life ?

(1) On July 1, 1997, One day before the scheduled hearing, I faxed a four page document an First Amendment rights to my counsel who was working in NLRB for General Counsel to refuse a unfair settlement to the Case No: 2-CA-28359 of the unfair labor practice case. I prepared the documents to object to the employer's attorney use of obscured evidence (letters to bargaining) to demonstrate that actual malevolence existed, defamatory and libel. (App.p.48a.)

On July 2, 1997, the scheduled hearing was canceled without any "notice of motion", and nobody knew by whom? Why ? How ? This is NLRB's officer merely by whether complied and misconduct the statutory scheme. (App. p. 61a)

The scheduled hearing was canceled for "unknown" reasons, which is an explicitly constitutionally impermissible

reason, no procedural due process of unfair labor practice cases were practiced in my case by the NLRB.

After I was applied my First Amendment right, the NLRB's officer canceled the scheduled hearing which use silence, latent with "vague", no judicial review, then they do not need normally permitted to assert all of my constitutional rights, keep the right and power under Commerce Clause and National Labor Relations Act extended to great lengths.

(2) The NLRB's officer canceled the scheduled hearing by interrupting speech with silence with latent to make a "vague" doctrine which is deterrent to constitutional civil right to court. The unfair labor practice case which is the constitutional civil liberty and property right to create a legitimate claim of entitlement to a benefit. The NLRB is a "classified civil servant" who must follow procedures with due process to the necessary public service which is entitled to be judged by independent constitutional standards, not by merely by whether they complied with the state statutory scheme. (App.p. 44a.)

Since the constitution requires at least ***"some kind of hearing"*** prior to the deprivation of any significant property interest. But here is private party to private party lawsuit under an unfair labor practice case in the legal action. The unfair labor practice case need a ***"full evidentiary hearing."***

The scheduled hearing was canceled for "unknown" reasons.

The Title 29, CFR, Chapter 1, National Labor Relations Board, No any words said, a case after issued complaint and scheduled hearing could "waiver", "cancel" for a unknown reason and after the scheduled hearing could

withdrawal complaint without administrative law judge approval.

(3) After the scheduled hearing date with no judicial review, my counsel mailed a settlement to me with only the employer's offer and I refused to accept it and applied the First Amendment to protect my rights, but the NLRB's Regional Director was gave an "overbreadth" analysis to the interrupted speech, and withdrawal the complaint. Then, I had applied to the NLRB General Counsel which given another "vague standard" to "overbreadth" analysis what interrupted the speech.

Also, the NLRB's Regional Director approval the unilateral settlement against the third party's right which is legal restricted not assert the constitutional rights not before the Court , that is ***"Genuine obstacle"***

(4) I had worked with the China Press for about five years(1990-1995) where there we had a ***"de facto"*** tenure program/expressed contract, which was breached by the China Press's illegal deduction of wages and fired me because of a union activity. A state legislature cannot absolve debtors' obligations to other parties. The Contract was an impairment of my creditor's rights by the NLRB's Regional Director's decision to withdraw the complaint and approve an unilateral settlement without a charging party and Administrative law judge's approval, this is ***obstructing the Administration of justice.*** Why isn't an opportunity given to me to argue before a judge my objections and reasons? (Leeds & Northrup Co. v. NLRB, 357 F.2d 527 (3d Cir. 1966).) (App.p.25a, 44a – 52a.)

Finally, The NLRB Regional Director handed the paycheck over, one year later, but not as "legal tender" to pay. The China Press was being protected by the NLRB so that they need not pay or address any obligation. They conspired

together and so actual malice existed. Also "with knowledge of was false and reckless disregard of whether it was false or not" in violation of the Contract Clause..

Accordingly, that the NLRB's Regional Director under a "motion" scheme doing any "motive" activity with " No judicial" ***to impose significant due process barriers*** and deprivation of any constitutional rights of worker or labor has had. That from unethical anti-individual-union activities, exposed the menace to civil liberties from the concentration of power in private hands (Employers and NLRB's Regional Director), and advocated the application of strong government power to protect the Bill of rights. Then the federal government held out the promise (NLRB's General Counsel are secondary boycotts) of safeguarding work's rights. Thus, the labor's liberties and property right to be coercion from private employer and Congress. The NLRB's Regional Director will "legally" to "fraud" "misuse" the official power to breach the constitutional civil rights and liberties.

Taft – Hartley Act. (Labor-Management Relations Act.) Taft – Hartley amendment, Section 8 of the NLRB by prohibiting union activities that specified in Section 8 (b). Forbidden are second boycotts, jurisdictional strikes over work assignments an employee on account of his or her union affiliation, or lack of it. (App. p. 20a,21a.)

I am convinced that effective control over the exercise of civil liberties in the United States rests where it has away been – with masters of property that will loosen the effectiveness of those control.

The NLRB's officers' various reconstruction statutes, which made civil rights violations federal crimes, were reexamined for their contemporary applicability.

The Federal Court of Appeals for second Circuit may not have found these very important points of the NLRB with "NON" hearing and with "state actions" are in the significance of state involvement.

II

The Federal court of appeals for second Circuit's Decision is in Direct and Readily Apparent Conflict with the Supreme Court's Opinion in Houston v. Hill, 482 U.S. 451 (1987) (The First Amendment's Free Speech "overbreadth" doctrine to interrupted.)

A statute is overbroad if in addition to proscribing activities which may constitutionally be forbidden it also sweeps within its coverage speech or conduct which is protected by the guarantees of free speech or free association. (Thornhill v. Alabama, 310 U.S. 88 (1940).) I three times applied my constitutional right of free speech, but the NLRB's Counsel, Regional Director and General Counsel attempted to have my speech (National Labor Relational Act.) ruled unprotected by the Constitution. I believed the NLRB violated my First Amendment rights, and not permitted to assert my rights before the court.

The scheduled hearing was canceled for "unknown" reasons.

The Title 29, CFR, Chapter 1, National Labor Relations Board, No any words said, a case after issued complaint and scheduled hearing could "waiver", "canceled" by unknown reason and after the scheduled hearing could withdrawal complaint without administrative law judge approval.

In fact, I orally told my counsel those letters were stories and he knew that these were being used on the China

Press's attorney to bargain for a settlement. Then, he informed me that a settlement would go ahead with or without my approval. One day before the scheduled hearing, I sent a four page document to my counsel saying that what I wrote was protected by First Amendment Constitutional Rights. The answer was the cancellation of the next day's hearing. There were no further notices of rescheduling. Three days later, I for the second time applied the rights to NLRB's Regional Director, but his answer is "....physical harm and contain obscene language ... boundary from protect speech..." and " withdrawing the complaint and I am approving the proposed settlement agreement in this matter." Then, I wrote an appeal to the General Counsel to defend my First Amendment rights. The General Counsel answer; "... 'used metaphorically'... such threatening remarks are not protected by the Constitution ... under the National Labor Relations Act." I believe it is fraud for the counsel to keep silent when his duty is to speak. The Regional Director and General Counsel had the Police power with an "overbredth" analysis to interrupted the "Free speech" that the Supreme Court was struck down as overbroad a Houston ordinance that made it a crime to "interrupt any policeman in the execution of his duty..." : the here statute prohibited all speech that interrupted, in any manner, any duty of an officer."(Houston v. Hill, 482 U.S.451 (1987).) and Airport Commissioners of the Los Angeles v. Jews for Jesus, Inc., 482 U.S. 569 (1987). The Federal Court of appeals for second circuit may not agree the difference with Supreme Court's Opinion, that which one is the person before arrest "as applied" the First Amendment rights then to court. In this case that is before the hearing to apply the First Amendment rights, then, the hearing "waiver" and "overbreadth" doctrine by police interference, "deterrent" people to the court.

But, there same "may will be that the state has the power constitutionally to punish a person who uses speech for

the sole purpose of preventing an arrest or investigation." Here, may perhaps more important, that the NLRB's officer used an abstract idea to trump up a false charge with constitutionally impermissible reasons to canceled a scheduled hearing, "motive" try "No judicial review" to escape the problems, which (1)The private litigants Civil right with the access to courts was denied.(2)The state action, "Nexus" doctrine – the significance of state involvement with "peremptory challenges as joint participation." The employer's attorney used the charging party's bargaining letters some words to against the case, that actual malevolence existed, "with knowledge that is false", that is defamatory and libel.

The NLRB's Regional Director freedom from arbitrary adjudicative procedures to admit with "reckless disregard of whether it was false or not", then, withdraw the complaint that the state did not grant enough procedural safeguards. Therefore, the NLRB's Regional Director could be held liable for violating my constitutional rights. Thus, violation of the Fourteenth, Thirteen and Tenth Amendment. And also, where the mere existence of a comprehensive regulatory scheme is itself sufficient to foreclose claim brought against the United States under the First Amendment and the due process required exclude from Fifth Amendment coverage.

III

This case presents an unsettled question of federal law regarding the application of Pro Se takings analysis to government action involving the total expropriation of property interest other than real property. (Fifth Amendment's Procedural No Due Process.)

The scheduled hearing was canceled for "unknown" reason.

The Title 29, CFR, Chapter 1, National Labor Relations Board, No words says a case after complaint is issued and hearing scheduled could be "waived" or "canceled" for unknown reason and after the scheduled hearing could withdrawal complaint without an administrative law judge approval.

(I) Despite the apparent lack of protection of free speech given by Gitlow v. New York, 268 U.S. 652 (1925) and Whiney v. California, 274 U.S. 357 (1927). The Court did, in pre-World War II, impose significant Due process barriers to wholesale convictions for prohibited. The present status of freedom of speech is best expressed in Brandenburg v. Ohio U.S. 444(1969), a case in which the Court combined the most speech-protective aspects of both the "clear and present danger" test and the "advocacy /incitement" distinction. The basic idea is that the "Free speech" underlying hearing to distinction that the NLRB's Regional Director may not withdraw the complaint to hearing . "...nor be deprived of life, liberty, or property, without due process of law." (Amendment V. Due Process Clause)

(II) The NLRB's Regional Director withdrew the complaint and approved the unilateral settlement without an administrative law judge's approval to cut off my remedy of reinstatement and back pay with no hearing, that the First Amendment's "overbreadth" doctrine against assertion of the third party's rights on legal duty. The reinstatement and back pay is private contract between the employer and employee underlying obligation, the cutoff reinstatement and unilateral settlement without charging party agree to, where as the contract clause was impairment of creditors' rights.

(III) The job's underlying private contract which is not in public employment case. According the worked had a

"de facto" tenure claim, and that such a claim, if proven, given plaintiff a property interest. (Perry v. Sindermann, 408 U.S. 593 (1972).) The NLRB's Regional Director and General Counsel upon discretionary or "prudential" considerations can not mandated by the article III "case or controversy" requirement. Therefore, it is found that the NLRB with the China Press made a Special relationship to conspire and injure a third party's rights.

(IV)The China Press attorney obscured evidence that demonstrated that actual malevolence existed, defamatory and libel. The NLRB legislature cutoff my right to reinstate my former position and approved a large difference in amount of back pay with no hearing, no administrative law judge's approval and "voluntarily" refused to agree, the NLRB's Regional Director only with freedom from arbitrary adjudicative procedures, with impairment of third party rights under legal restriction which prevent the third party from exercising his constitutional rights.

(V) Contract clause : The unilateral settlement is offer by employer only, recommended by counsel and NLRB's Regional Director approved the employer's offer with police power, but the paycheck held by NLRB's Regional Director over one year which not in "legal tender" to pay. Then, the case totally cease-and-desist by order with no remedies, no compensation. "...nor shall private property be taken for public use, without just compensation. (Amendment V. Taking Clause. And Contract Clause.)

The China Press's illegally deducted my wages and fired me because of my union activities and breached the working contract. A state body may not absolve a debtor of its obligation to pay. "No State shall...pass any..... Law impairing the Obligation of Contract..." (Article I, Section 10, Contract Clause.) which the NLRB's Regional Director

misused his official powers and abridged my total rights and liberties, these are; (1)The private litigants Civil right with the access to courts was denied.(2)The state action, "Nexus" doctrine – the significance of state involvement with "peremptory challenges as joint participation.

Accordingly, whether pro se taking analysis applies in cases where the NLRB takes all intangible property interest of the worker's that I had a protect interest entitling him to procedural due process.

X : CONCLUSION

First, individualistic theories are concerned with our negative freedom from government intrusion (civil liberties), and in those terms the state denies equality only when it is imposes laws or regulations that insist on inequality. If we are thinking of the positive right to the support of government (civil rights), we will consider that the state also denies equality when it tolerates inequality. In other words, is equal protection a claim on the state or a protections against it ?

Second, individualistic teachings hold that the government is intended to serve private liberties, and consequently, the state is limited to, and responsible for, only the narrow sphere of formal, public institutions. It has neither the duty nor the right to interfere with society. Defenders of public liberty, by contrast, are inclined to argue that public authority is responsible for ordering private life. In short, to what extent does our right to equal protection extend beyond formal public institutions into social and economic life ?

In this case, the NLRB issued a complaint, scheduled a hearing, and then denied the hearing (waiver, cancel, not open, withdrawal, or public prosecutor, judge absence as nothing there...with "unknown"...etc.) without any legal

reasons; it looks like to be "in the absence of congressional legislation," but, the "absence" with "state 'NON' action" was an "action" to conjunction the after the scheduled "hearing" continued "state action" withdrawal the complaint, instead of a mandate to interrupt speech, to approve an unilateral settlement without any judicial review which as is to totally deprive a individual citizen's life, liberty and property against the private party's civil rights and liberties. This is not a metaphysical doubt, but demonstrates that summary order and denied the rehearing was clearly inappropriate in this case.

This Court should grant the Petitioner consideration to these issues in order to guide lower federal court on the proper use of the award of summary order.

For these various reasons, the petition for certiorari should be granted.

Respectfully submitted,

LONGINUS YEN (Pro Se)
30 – 35 73rd Street, #3C
Jackson Heights,
New York, NY 11372
(718) 335 - 8265

Appendix

NO. 97 - 6050

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

LONGINUS YEN,

Plaintiff – Appellant,

V.

NATIONAL LABOR RELATIONS BOARD
and
PACIFIC CULTURE ENTERPRISE,
D/B/A THE CHINA PRESS,

Defendants-Appellees.

On Appeal From The UNITED STATES DITRICT COURT
For The Southern District Court of New York
IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT FOR REHEARING

BRIEF FOR PLAINTIFF - APPELLANT
LONGINUS YEN

COUNTERSTATEMENT OF SUBJECT MATTER AND APPELLATE JURISDICTION

NLRB only notice of the charges and needed some kind of opportunity(1) to respond before withdrawal of the complaint, not a full evidentiary hearing of the sort found necessary(2) in the case, the procedures to which the case was entitled were to be judged by independent constitutional standards(3), not merely by whether NLRB complied(4) with the state statutory scheme(5). Since the constitution requires at least **"some kind of a hearing"** (6)prior to the deprivation of any significant property interest(7). I believe, NLRB withdrawal of the complaint for hearing denied due process. More important, which reason is prohibited(8) speech that is wholesale conviction.

STATEMENT OF THE ISSUE PRESENT

The National Labor Relations Board policy and Act. Against allowing federal courts to act like a "roving commission" whose purpose is to enforce judges' own views of legality or the interest of "bystander" in having constitutional or statutory principles adhered to.

According "While the courts have declared that there action where there is violation of a constitutional right, there must be a substantial showing on the face of the complaint that such violation existed." I present that the National Labor Relations Board serial violations of constitution of which double abridgment of my First Amendment rights, and double No Due Process of law that one is deterrent my right to court and second breached The Contract Clause when the NLRB did not fulfill its obligations on purpose, which by virtue of the Fifth Amendment's Due Process of Law and the unilateral settlement agreement is violation of Taking Clause.

---

(1) Charge/Affidavit/Investigation. (2) Complaint/Right to call Witnesses, Right to Counsel, Right of cross-examination/ "Case or Controversy "? (3) Constitutional standards : To Court. (4) Merely / Discretionary. (5) Scheme / "Prudential" considerations / Unconstitutional standards: Advisory opinions / Violent interference / Not normally permitted to assert the constitutional rights of others, only his own/applied and denied. (6) At least when applied according to Constitutional rights / First Amendment / Freedom speech / At least some kind of a hearing. (7) may be "utilized" not to effectuate a "voluntary"/free wills, but for deprivation. (8) Third party interest : Conspiracies / Assert the constitutional rights of persons not before the Court / The Unilateral Settlement Agreement with The Taking Clause / The First Amendment "overbreadth" doctrine / To impairment the Obligation of Contract / To obstructing the administration of justice. / Despite the apparent lack of protection of free speech...impose significant due process barriers to wholesale convictions for prohibited speech

STATEMENTS OF THE CASE

A: The National Labor Relations Board's Unfair Labor Practice Proceeding **(May have been overlooked)** * p = Appendix page No.

1: After the AFFIDAVIT(p36-9) confirming the unfair labor practices of the China Press, an offer for settlement was never made. Aug 9, 1995, a hearing was scheduled for Jan 29, 1996. But on Jan 12, 1996 the hearing was rescheduled to May 14, 1996 due to the sudden shutdown of the Federal Government. On April 18, 1996 my counsel contacted me because he wanted to meet before the hearing. Again a rescheduling order was placed to reschedule from May 14, 1996 to July 2, 1996. In the last week before the hearing I conferred with my counsel about the case. Early in the week my counsel asked me if I wanted to settle. I did not approve of it(p74). Later in the week before the hearing, China Press's attorney faxed my letters to my counsel. At which time my counsel decided to settle and asked me for authorization. I **refused** to settle a few days before the hearing asserting that the letters was my constitutional right. My counsel then informed me that a settlement would go ahead with or without my approval. On Sunday, June 30, 1996, China Press proposed(p93 - 94) a settlement of which my counsel recommended yet did not sign.

2: On July 1, 1996 I sent a four page(p82-9) document saying that what I wrote was protected by my First Amendment Constitutional Rights. I denied that what I wrote was not real and just a story, it did not mean to promote any harm. (First time to applied my First Amendment rights.)

3: On July 2, 1996 when I arrived at the court, I found out that my hearing was canceled. I had a receptionist there to sign

a paper confirming I came to the court(p95-6). No one told me that the hearing was canceled, who has the power and ability to cancel my hearing? In the afternoon I received a letter dated July 1, 1996 asking me to sign the proposed settlement. Nothing in the letter even hinted that the hearing was going to be canceled. I was given seven business days to give my position on why the Regional Director should not accept the agreement (p90-94).

4: July 5,1996, I send letter by fax, by mail, by registered mail and by hand. In which I try to explain ".. their equivalent fiction and poetry that totally should be totally protected under the Constitution" It is the **second** time I apply my First Amendment rights which would violation not now before the court(p97-8) and on July 10,1996 an illegal answer letter from Regional Director that is interrupted the Speech Which is prohibited (p99-105).

5: On July 22, 1996 I wrote an appeal to the General Council to defend my first amendment right. I asserted that I was the president of a newsletter and I was just asserting my rights. They denied my appeal on the basis that my argument was invalid on Aug.14, 1996.(**third** time)(p107 - p.111)Another officer which interrupted the speech.(p.113 - 114)

The three letters I wrote, July 1, July 5 and July 22 ,1996 was applied according to its terms and their were all protected under my First Amendment Constitutional Rights. No one in any manner, any duty of an officer, any authority to abridge these rights unless before a court.

These applied letters and denied answer letters which are the substantial showings.

B: Law and facts. **(may have been miscomprehended.)**

In fact, before April 18,1995, The China Press from year 1991 frequently illegally deducted my wages which until on April 17, I cannot afford their tyranny so I wanted going to organize union to protect my right. The illegal deductions are prohibited by New York State Labor Law (p 40) On June 30,1996, approximately **$50,000(p.49 - 54)**. I cannot believe the Constitution's Fifth Amendment's Taking Clause protect my "property" just **($3,400)** compensation for public use and I believe The Constitution article I, Section 10: "No State shall...pass any... Law impairing the obligation of contract...." The NLRB's laws breached my former working (Expressed) contract with The China Press; they worked in a conspiracy. I believe any contract (agreement) signed without a acceptance which should valued that factor is definitely satisfied if either the litigant or the third party is placed under legal restrictions which prevent the third party from exercising of my constitutional right. **The third-party standing : One of principal functions of the standing doctrine is to implement the general rule that a litigant may normally not assert the constitutional rights of persons not before the Court.** And The NLRB rule is prudential, not constitutional which the general rule against third-party standing is founded upon discretionary or "prudential considerations, and is not mandated by the Article III "case or controversy" requirement. According to the NLRB Regional Director's letter of July 10,1996 that is a advisory opinion which give advice about particular legislative or executive action, when no party is before the court who has suffered or imminently faces specific injury. I believe the advice letters that are issued from NLRB Regional Director on July 10,1996 and General Counsel on August 14, 1996 appeal the case is existence of a special relationship between the litigant and the third party, such that vindication of the third party's rights will **remove the injury in fact** suffered by the litigant, and also such that the **litigant's interest is so closely analogous to the interest of the third party** that the former is an effective

proponent of the latter's rights. ***(Singleton v. Wulff, 428 US. 106 (1976).)*** The special relation may look which is such that : **grant of the relief being sought will remove the injury-in-fact to the litigant and the litigant is an effective proponent of the third party's interest.**

And, the First Amendment **"overbreadth" doctrine** can be viewed as the exception to the rule against assertion of a third party's rights. (The Another Exceptions)

And, the NLRB held the checks that after close case approximately one year and NLRB to breached contract's obligation which is **(second times)** substantial showing there No Due Process of Law. In all of the sense that the injury would not have occurred unless the challenged action had taken place. (The fraud from p.4 to NEW evidence p163-p174, ending Nov. 13,1997)

SUMMARY OF ARGUMENT

When a person's life, liberty or property are at stake in a traditional civil or criminal lawsuit, the range of procedural protections required by the Constitution is at its broadest. Certainly as a matter of practice, and probably as a matter of constitutional due process, the state may not take life, liberty or property as the result of a lawsuit - even if the suit is brought by a private party against another private party - without granting such protections as the right to call witnesses, the right to counsel, the right of cross-examination, and the **right of judicial review**. Even where the NLRB creates the property interest in question, it is not free to establish procedures for terminating that right- "property cannot be defined by the procedures provided for its deprivation any more than can life or liberty. The right to due process 'is conferred, not by legislative grace, but by constitutional guarantee.'...[O]nce it is determined that the due process Clause applies, 'the question remains what process is

due.'....The answer to that question is not to be found in the... statute [creating the property right.]" ***Cleveland Bd. of Ed. V. Loudermill*, 470 U.S. 532 (1985)**

The unilateral settlement agreement was not assert my constitutional rights which include First Amendment right, not before court. Even the Regional Director own his motion in informal case or upon general counsel discretionary. Because ***Violent interference*** is prohibited by 18 U.S.C #245, part of the 1968 Civil Right Act.

ARGUMENT

1 :The China Press obscured evidence to demonstrate that actual malevolence existed, defamatory and libel. The NLRB with freedom from arbitrary adjudicative procedures that is conspiracy.

A statute is overbreadth if in addition to proscribing activities which may constitutionally be forbidden it **ALSO** sweeps within its coverage speech or conduct which is **protected by the guarantees of free speech or free association.*(Thornhill v. Alabama, 310 U.S. 88 (1940))*.**By which a person is not normally permitted to assert the constitutional rights of other, only his own. The statute is prohibited all speech that interrupted, in any manner, any duty of an officer. Thus it effectively gave the police "unfettered discretion to arrest individuals for words or conduct that annoy or offend them." ***(Houston v. Hill, 482 U.S.451(1987)).*** The Police Interference.

The China Press misled NLRB to approve an unilateral settlement agreement which was an Impairment of third party rights and the Relation to overbreath doctrine the First Amendment..

(A) **Legal duty :** If either the litigant or the third party is placed under legal restrictions which prevent the third party from exercising his constitution rights.

(B) **Special relationship :** The existence of a "special relationship" between the litigant and the third party whose rights he seek to assert is at least helpful, and according to some members of the Court is essential to *jus tertii.* The Court generally looks for a relationship which is such that: (a) grant of the relief being sought will remove the injury-in-fact to the litigant; (b) the litigant is an effective proponent of the third party's interests. ***(Singleton v. Wulff, 428 US 106 (1976) plurality opinion of Justice Blackmun)***

Relation to overbreadth the First Amendment doctrine to the rule **against assertion of the third party rights.** The First Amendment **"overbreadth"** doctrine can be viewed as the exception to the rule against assertion of a third party's rights. A party to whom a criminal statute clearly and constitutionally applies may be permitted to argue that the statute is applicable to some types of conduct which, if engaged in by third parties, would be constitutionally protected. Although assertion of a third party's rights is at the **core** of the overbreadth doctrine, overbreadth is nonetheless distinguishable from the exceptions to the ban on *jus tertii* considered above. In the overbreadth context, the third parties are hypothetical, and the litigant is **also** asserting his **own** constitutional right not to be convicted under a broadly-drawn statute which may chill his freedom of expression.(The **"Core"** is a **Labor case** or **Constitutionally third party's rights?**)

Two or more persons who conspire to deprive any one of equal protection or privileges and immunities under the law, may be subjected to civil suit under 48 U.S.C. # 1985 (c). This provision, which derives from the 1871 Civil Rights Act.

Appears to be applicable even where there is no state action, so long as access to a federally-guaranteed right is infringed or sought to be infringed. (Please see the appendix Pages:4, 43, 49,59,79,82-102. Page 4 is the **core**.)

2: The National Labor Relations Board action is subject to the "mere rationality" standard that is unconstitutional. The constitutional right which are applicable against private interference include: the right to inform federal officials of violations of federal law and the right to assemble to petition Congress for a redress of grievance. These rights are **NOT** necessarily Self-Executing. That is one private citizen may recover damages against another, or obtain a injunction against him, for violation of any of these rights, unless a congressional statute so provides.(Public accommodations is banned, and made subject to private and government civil suit in the **Public Accommodations Title of the Civil Rights Act of 1964, 42 U.S.C # 2000a *et seq.*)** This title was based on Congress' power to regulate interstate commerce, not power to enforce the Civil War Amendments.

(a)Withdrawal complaint to hearing which is not by lack of merit **(Closed court first than given reason ?)**, is upon discretionary or "prudential" considerations, and is not mandated by the Article III "case or controversy" requirement. That is no "due process of law".

The NLRB case handling manual ; Section 10140.3 **Violence**: .Where there are relatively isolated instances of **violence** that have since terminated and if the Regional Director is satisfied that in all the circumstances there will be no recurrence of violence, an informal settlement my be utilized to effectuate a voluntary settlement. It is **Violated interference** with a person's enjoyment of his civil rights, even if it is not part of a conspiracy (as is required for application of 18 U.S.C. #241) and even if it involves no state

action (as is required for 18 U.S.C. #242) **is prohibited by 18 U.S.C. #245, part of the 1968 Civil Rights Act**. Or, the only right explicitly given by the Fourteenth Amendment is the right to be free of certain types of Governmental **Police** action ?

The Supreme Court's case on what is due reflect strongly the notion that the principle reason for procedural safeguards is to prevent inaccurate decisions. This notion implies that if the means by which a decision is... his autonomy respected, by being permitted to participate in the decision, and by receiving a reasoned explanation of adverse conduct. But the NLRB's Director by "mere rationality" withdrawal of complaint prior to hearing that it could not be otherwise than urging the recognition of **" Freedom from arbitrary adjudicative procedures as a substantive of one's liberty. "**

(b) Undue influence with violence interference to make "Unilateral" settlement agreement effectual purposes of the National Labor Relations Act.

a; The Fifth Amendment, Taking Clause with Due Process Clause.

The ban on the taking of private property for public use, without just compensation.

The "Unilateral" settlement agreement that I did not sign nor agree to and the unilateral settlement agreement made by undue influence which was not by voluntary. It is maybe a illegal agreement because that Contracts **obstructing the administration of justice**.

b; Article I, Section 10, Contract Clause which with Due Process Clause.

The Constitution article I, section 10 ; prohibition on the impairment contract. (The Contract Clause was

breached when the NLRB did not fulfill its obligations on purpose.)

On October 10,1997 The NLRB Region #2 Office mailed a blank paper with two checks issued by The China Press and the dated was July 1,1996 that face amount is $3,167.90. I returned it because it is not in ***"legal tender".*** Then, October 15,1997 The Board agent, Esther Morales may through somebody deliver to me same two checks, and in doing so breaking my mail box. There was also no stamp or meter stamp or any indication that it was mailed by the United States Postal Service. I returned it again and report to NLRB D.C. Office on October 16,1997. On November 5,1997, the Regional Director, Daniel Silverman mail to me two letters, On November 13,1997, The NLRB D.C. Office Assistant General Counsel Celeste J. Mattina mailed a letter to me and said: "...Due to circumstances beyond the Region's control." But I believe that is NLRB did not fulfill its obligation on purpose which is very clearly evidence to showing The NLRB with The China Press conspiracies. Because, the check after six months is "Stale check" that the bank is not required to pay it. And I believe, **in the sense that the injury would not have occurred unless the challenged action had taken place.** The contract obligation is breached because of **Malpractice** and negligence or may fraud. But, I believe the action is part of conspiracies.

3: Civil damages and punitive award remedies;

CONCLUSION

For the foregoing reasons, I believe this is totally a censorship issue. This is NLRB Director pulling view that he personally doesn't like and approved by General Counsel thus they decided to act as a Labor Relations **Czar.**

According the FEDERAL RULES OF APPELLATE PROCEDURE Rule 48. Masters : "....appoint a special master to hold hearing." It is necessary, because appellant is pro se that very hard to read, to write, to hearing and to speak well, the fair jurisdiction only showing the original evidence. The evidence will talk. Much of the evidence is in Chinese. Should the court be unable to read it, I will gladly interpret it for the court or I can bring a translator or the court can hire its own unbiased interpreter.

Maybe this case is historical one and only case that government double violated First and Fifth Amendment case which is very important for Constitutional conscience. But I wish the hearing no more one hour the master's compensation no more than $100 include taxies.

Respectively submitted,

/s/ LONGINUS YEN
(Pro Se)

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
United State Court House
40 FOLEY SQUARE, New York 10007

George Lange III
Clerk

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Squares, in the City of New York, on the 17th day of March one thousand nine hundred and ninety-eight.

Present:

PRESENT:
HONORABLE ELLSWORTH VAN GRAAFEILAND,
HONORABLE RICHARD J. CARDAMONE,
HONORABLE JOSEPH M. McLAUGHLIN,
Circuit Judges, 97-6050

Yen
Appellant,

v.

Natl Labor Relations
Appellee.

A petition for rehearing having been filed herein by LONGINUS YEN, Upon consideration thereof, it is Ordered that said petition be and it here by is DENED.

GEORGE LANGE III,
Clerk

MAR 17, 1998
DATE

/s/ Beth J. Meador
Beth J. Meador,
Administrative Attorney

UNITED STATES COURT OF APPEALS SUNY
FOR THE SECOND CIRCUIT 96-CV-9566
SUMMARY ORDER Griesa. DJ

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THEFEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THE CASE, IN A REALATED CASE, OR IN ANY CASE FOR PURPOSE OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City and County of New York, on the 24th day of NOV one thousand nine hundred and ninety-seven.

PRESENT:
HONORABLE ELLSWORTH VAN GRAAFEILAND,
HONORABLE RICHARD J. CARDAMONE,
HONORABLE JOSEPH M. McLAUGHLIN,
Circuit Judges.

LONGINUS YEN,
Plaintiff-Appellant,
- v. - NO.97-6050
NATIONAL LABOR RELATIONS BOARD;
PACIFIC CULTURE ENTERPRISE, INC.,
D/B/A THE CHINA ORESS,
Defendants-Appellees.

FOR APPELLANT: Longinus Yen, pro se, New York.

FOR APPELLES:
Margery E. Lieber,
Assistant General for Special Litigation,
Eric G. Moskowitz,

Deputy Assistant General Counsel for Special Litigation,
and
Denise F. Meiners,
Attorney, Special Litigation Branch,
National Labor Relations Board, Washington, DC.

Appeal from the United States District Court for the Southern District of New York(Griesa, C.J.)

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York and was argued.

ON CONSIDERATION WHEREOF, it is hereby ordered, adjudged, and decreed that the judgement of the district court is AFFIRMED.

Longinus Yen was employed by Pacific Culture Enterprise, Inc., d/b/a The China Press("China Press"), as a salesperson and business reporter from 1990 until his dismissal in April 1995. Yen alleges that he was fired in 1995 because he planned to form a union to protect himself and the other employees at China Press from the constant increases in advertising minimum sales per month required of the salespersons, and form the threats of being fired.

In April 1995, Yen filed an unfair labor practice charge against China Press with the National Labor Relations Board("NLRB") Region 2 Office. The Regional Director of Region 2 issued an unfair labor practice complaint, and settlement negotiations took place from June 1995 through June 1996. Yen refused all offers of settlement.

In July 1996, the regional director considered a settlement agreement that provided that he would be entitled to backpay of $3,400, but that he would not be reinstated.

Yen appealed the settlement agreement and subsequent dismissal to the General Counsel's Office of Appeals. The General Counsel denied the appeal and sustained the settlement. China Press subsequently complied with the settlement agreement, and the unfair labor practice case was officially closed in November 1996.

Seeking judicial-review of the decision of the General Counsel, Yen appealed pro se to the United States District for the Southern District of New York (Gerisa, C.J.) . The court dismissed the complaint for lack of subject matter jurisdiction. Yen appeals.

The federal courts do not have authority to review the decision of the NLRB's General Counsel to dismiss an unfair labor practice complaint and enter into a settlement in which the charging party refuses to join. See National Labor Relations Board v. United Food & Commercial Workers Union. Local 23, AFL-CIO, 484 U.S. 112, 114 (1987); Beverly Health and Rehabilitation Servs. V. Feinstein, 103 F.3d 151, 153-154 (D.C. Cir. 1996); National Maritime Union v. NLRB, 423 F.2d 625, 626(2d Cir. 1970) (per curiam). The federal courts do not have subject matter jurisdiction to entertain Yen's suit.

We have considered all of Yen's other argument and find them to be without merit.

Accordingly, the judgement of the district court is affirmed.

NOV 24, 1997
DATE

For the Court,
/s/ George Lange, III.
Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LONGINUS YEN, Plaintiff, -against- NATIONAL LABOR RELATIONS BOARD; PACIFIC CULTURE ENTERPRISE, INC., D/B/A THE CHINA PRESS Defendants.	96 CIV, 9566 ORDER OF DISMISSAL

Plaintiff bring this action pro se. He seeks judicial review of the National Labor Relations Board("NLRB") General Counsel's decision sustaining an informal settlement with plaintiff's employer. Plaintiff alleges that the settlement was reached without his consent in violation of his constitutional rights. He seeks monetary damages and injunctive relief. We grant plaintiff request to proceed *in forma pauperis* solely for the purpose of this order, but dismiss the complaint for lack of subject matter jurisdiction.

Background

Plaintiff, a salesperson and business reporter for Pacific Culture Enterprise, Inc. doing business as the China Press, was terminated on April 17, 1995, allegedly because he attempted to organize a union. Plaintiff reported his termination to the NLRB which issued an unfair labor practice charge against his employer on April 18, 1995. On August 9, 1995, the NLRB issued a complaint and a hearing was for January 29, 1996. Which never took place.

Settlement negotiations continued for approximately one year, between June 17, 1995 and Jane 28, 1996. During that

time, Plaintiff refused to consider any settlement offers. On July 1, 1996. The NLRB proposed a pre-hearing settlement which became final on July 10,1996. Plaintiff objected to the settlement agreement because it did not allow for his reinstatement and terminated his back pay at August 1, 1995. Plaintiff appealed to the NLRB General Counsel, who sustained the settlement by letter dated August 14, 1996. Plaintiff now seeks judicial review of the settlement decision.

Right to Judicial Review

The subject matter jurisdiction of the federal district courts is limited and is set forth generally in 28 U.S.C. #1331 and 1332. Federal jurisdiction is available only if the claim arises "under the constitution, laws or treaties of the United States." 28 U.S.C. #1331. A decision of the NLRB General Counsel to dismiss a complaint and sustain an informal, prehearing settlement entered into without the charging party's consent is not subject to judicial review under either the National Labor Relations Act. or the Administrative Procedures Act. National Labor Relations Bd. V. United Food and Commercial Workers Union, 484 U.S. 112 (1987). Here, because plaintiff's complaint was withdrawn by the informal. 29 C.F.R. #101.9 (c)(3). An informal settlement sustained by the General Counsel is not subject to judicial review. Id. Therefore, this court lack subject matter jurisdiction to review this claim.

Conclusion

Accordingly, the complaint, filed *in forma pauperis* under 28 U.S.C. is dismissed because it fails to allege any facts establishing subjection, Fed. R. Civ. P. 12(h)(3), and therefore "lacks an arguable basis in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989); 28 U.S.C. #1915 (e)(2). We certify pursuant to 28 U.S.C. #1915 (a)(3) that any

appeal from this order would not be taken in good faith. Coppedge v. United States, 369 U.S. 438, 444-45 (1962).

SO ORDERED:

DEC 20, 1996
DATE

/s/ THOMAS P. GRIESA
Chief Judge

United States Government
NATIONAL LABOR RELATIONA BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, D.C. 20570

August 14, 1996

Re; Pacific Culture Enterprise, Inc.
d/b/a China Press
Case No. 2-CA-28359

Dear Mr. Yen :

Your appeal from the Regional Director's appeal of a **Unilateral** settlement agreement in this case has been carefully considered.

The appeal is denied substantially for the reasons set forth in the Regional Director's letter of July 10, 1996. Although you contend that the threatening remarks contained certain letters you wrote to the Employer were "used metaphorically", it was concluded that they were of sufficient clarity and directness to constitute a lawful basis for the Employer to consider you as unfit for reinstatement. Contrary to your contention appeal, such threatening remarks are not protected by the Constitution within the ambit of employee rights under the National Labor Relations Act. and neither your political views nor those of the Employer are of any concern to this Agency ..

Accordingly, further proceedings herein were deemed unwarranted.

Sincerely,
Fred Feinstein
General Counsel
By /s/ Walter meyer
Acting, Director Office of Appeal

National Labor Relations Board
1099 14th Street NW
Washington, DC 20570
Attn. : General Counsel Office of Appeals.

Longinus Yen
35-30 73rd Street #3C
Jackson Heights, NY 11372

July 22,1996

Re: Pacific Culture Enterprises Inc., d/b/a The China Press
Longinus Vs. The China Press
Case Number: 2-C-28359

Notice of Availability of a General Counsel to Exercise Jurisdiction and Appeal

In accordance with the provisions of the National Labor Relations Act, Section 3(d), you are hereby notified that a General Counsel of this office of appeal. Is available to exercise the court's jurisdiction and to conduct any of all proceedings in this case including a jury or non-jury trial, and entry of a final judgement. Exercise of this jurisdiction by a general counsel is, however, permitted only if all parties voluntarily consent.

This is an appeal to the General Counsel Office of Appeals to ask for the reconsideration of the case. I ask for a reconsideration due to the misunderstanding of what happened. There have several incidents which have not be taken into account when my case was consider.

The first is a letter from the National Labor Relations Board, it stated that because I have sent threatening letters to the corporate officers I have lost my chance of reinstatement in the company. This is slightly untrue. I am the president of a newsletter called the China Press Weekly which is a division of SSERPXE. SSERPXE is held and operated To All To Print, Inc.,. As the president of an newsletter I wrote articles about the what has happened to me. These articles were written to reflect the tyranny of the China Press. Any persons

who were fired from the company unfairly or unlawfully would have been written about it just so happens that I am the most accessible person to write about. This is true because some persons have two identities, one identity is the corporate identity. In this case my corporate identity is president of the China Press Weekly. There is also a personal identity which in this case I am a unlawfully discharged employee. It is as at the corporate identity did I write of an unfair and unjust story of my personal identity. I was just merely exercising my **constitutional rights** as an American to write and say whatever I feel. I was also exercising the freedom of the press. It was my newsletter that wrote those articles not my personal identity. And if I should be reprimanded for writing, my rights have been violated.

The second, my appeal is also based on other incidents not taken in to account that from April 17, 1995. The China Press had acted in a series of violations that breach the National Labor Relations Act. One such incident is transpired on April 27, 1995 approximately 10:25 A.M. I was at the China Press's Flushing office when two employees there received phone calls from the Chinatown office ordering them not to help or cooperate with me. This is in violation of section 7 and section 8(a)(1) of the National Labor Relations Act.

An other incident happened the same day 10:32 P.M. I (as president of China Press Weekly) faxed an Advertisement Insertion Order to the company informing them of my purchase of one page of commercial advertisement. The advertisement would be for a book my company may be publishing. My request for the ad went unheeded and thus is a violation of my Constitutional rights. It is **liberty of free speech** under the Burger Court's definition.

The during next few day again another incident occurred. I have written a **bargaining** letter to the company asking for my

reinstatement as an employee . It is within my rights (Section 8(d) National Labor Relations Act.) for the company to respond as quickly as possible to the attempts at bargaining. It has been over One year and the letter has gone ignored. Ones again my rights have been violated.

On May 22, 1995 midnight a China Press employee accompanied by two men came into my home without my consent and threatened me, my son and wife. He said if I did not cooperate with the company the communist would not let me get away with it. This is not only violation of my section 8 rights but this is also a breach of criminal laws.

On June 19, 1995 The China Press sued me at the New York State Labor Department. They tried to cancel my unemployment. On July 11, 1995 The administrative law judge gave the ruling. The employer's objection is overruled.

The China Press stated that I had sent threatening letters when in fact they were part of my many newsletters. They submitted parts and words from those newsletters to my consultant at the Labor Relations Board. But these words were taken out of context and they were used metaphorically in my newsletters. If any he threat made in those letters cannot be used as evidence due to the fact that I was under service mental stress. I was threatened to be killed by China Press employees and was just sued to cut off my unemployment benefits.

They although acted within their full legal rights and used illegal methods, their actions and powers were directed at me with supreme "malice". The letters written on August 1, 1995 were just in response their unfair and unjust methods for me to give in.

I feel my perception was too difficult and I took an Initial Psychological Evaluation & Progress report on Oct 13, 1995.

It stated I had some minor problems with concentration. And a slight case of Paralexia which is impairment of reading ability characterized by misinterpretation of transposition of letters or words. This may not seem much but I have been an accomplished writer since I was fourteen. Since then I have written over three million words.

The third, in all I feel that my rights as American citizen has been violated and this case close prematurely by the Board because of their lack of careful examination of the events I have just described to you now. I wish a reexamination of my case against The China Press. I hope this appeal will help see the tyranny the communists and their owned and controlled newspaper publisher really are.

Very Truly Yours
/s/ Longinus Yen

Enclosures
CC: Daniel Silverman
National Labor Relations Board, Region 2
26 Federal Plaza #3614 NY,NY 10278-0104

United States Government
NATIONAL LABOR RELATIONA BOARD
Region 2
26 Federal plaza – Room 3614
New York, NY 10278-0104

July 10, 1996

Longinus Yen
35-30 73rd St., Apt 3C
Jackson Heights, New York 11372

Re: Pacific Culture Enterprise, Inc. d/b/a China Press
Case No. 2-CA-28359

Dear Mr. Yen:

The above-captioned case charging a violation under Section 8 of the National Labor Relations Act. as amended has been carefully investigated and considered.

On the basis of the investigation and in view of the undertaking contained in the attached settlement agreement, it does not appear that it would effectuate the purposes and policies of the Act to institute further proceedings at this time.

The Region issued complaint in this matter alleging that the above-named Employer violated Section 8(a)(1) and (3 by terminating you on April 17, 1995 because of your union and protected concerted activities. The attached settlement agreement addresses the conduct of the Employer that Region deemed to be violated of the Act. specifically, the settlement provides for you to be made whole and to remove any references from your personal file to your discharge and notify you in writing that has been done. In addition, the settlement agreement provides for a posting of Notice in which the Employer assures employees of their Section 7 rights and in

which the Employer commits not to discharge any employee because of their union activities or because they engage in protected concerted activities. The settlement agreement did not provide for your reinstatement, because it was determined that you engaged in post-discharge misconduct by sending threatening letters to the Employer representative that provided a sufficient basis for the Employer to refuse to reinstate you to your former position.

On July 1, 1996, a copy of the proposed settlement agreement was forwarded to you, and you were requested to join in the settlement or to submit any objections within seven days from the receipt of that the letter. By letter dated July 5, 1996, you objected to the proposed settlement agreement in this matter because it does not contain a remedy of reinstatement and cut off your right to receive back pay after August 1, 1995, the date of the letter send by you to Employer. Specifically, you stated that your letter of August 1, 1995 was not meant to be interpreted literally, that it was an exercise of your constitutional right to freedom of speech, and therefore did not constitute a threat to any official of Employer.

Contrary to your assertion that the contents of your letters are irrelevant, it is established Board law that a discriminatee's post-discharge misconduct can forfeit their right to the remedies of both reinstatement and back pay. A discriminatee who threatens a corporate officer with physical harm months after their discharge and without any proximate provocation risks the loss of their right to back pay and restatement. The evidence show that you began writing a series of letters to China Press within a week of your April 17, 1995 discharge. The employer asserts that these letters, individually and taken as a whole, constitute serious threats of physical harm and contain obscene language, thereby disqualifying you from being reinstated to your former position. After reviewing these letters, I have concluded that

your August 1, 1995 letter clearly crossed the boundary from protected speech to threat the Employer's chairman with physical harm. I also note that this letter contains clearly obscene and offensive language. As a result, I have concluded that your right to a remedy of reinstatement was cut off and your back pay was appropriately terminated as of August 1, 1995. The other objections you raised in your letter of July 5 also do not have merit. There is no law prohibiting contracts being signed on Sunday and the wording of the settlement agreement is not difficult to read.

Inasmuch as the settlement agreement requires, among other things, that the Employer pay you back pay through August 1, 1995 and post a notice promising not to discharge employees who engage in union organizing activities and protected concerted activities, it appears that the settlement agreement provides an appropriate remedy and fully effectuates the policies of the Act. Accordingly, I am withdrawing the complaint and I am approving the proposed settlement agreement in this matter.

Pursuant to the National Labor Relations Board Rules and regulations, you may obtain a review of this action by filing an appeal with the General Counsel address to the Office of Appeals, National Labor Relations Board, 1099 14th Street, NW., Washington, D.C. 20570, and a copy with me. This appeal must be contain a complete statement setting forth the facts and reason upon which it is based. The appeal must be received by the General Counsel in Washington, D.C. by the close of business at 5 p.m. EST(EDT) on July 24, 1996. Upon good case shown, however, the General Counsel may grant special permission for a longer period within to file. Any request for extension of time must be submitted to the Office of Appeals in Washington, and a copy of any such request should be submitted to me. If you file an appeal, please complete the notice forms enclosed with this letter and send

one copy of form to each of the parties. Their names and address are listed below. The notice forms should be mailed at the same time you file an appeal, but mailing the notice form does not relieve you of any necessity for filing the appeal itself with the General Counsel and a copy of the appeal to me within the time stated above.

Sincerely,

/s/ Daniel Silverman
Regional Director

SETTLEMENT ARREEMENT

IN THE MATTER OF **JUL 01 1996**
Pacific Culture Enterprise, Inc. d/b/a China Press
Case No. 2-CA-28359

The undersigned Charged Party and the undersigned Charging Party, in settlement of the above matter and subject to the approval of the Regional Director for the National Board, HEREBY AGREE AS FOLLOWS:

POST OF NOTICE – Upon approval of this Agreement, the Charged Party will po?? Immediately in conspicuous places in and about its plant/office, including all places where notice t? employees/members are customarily posted, and maintain for 60 consectutive days from the date of posting, copies of the attached Notice made a part hereof, said Notices to be signed by a responsible official of the Charged Party and the date of actual posting to shown thereon. In the event this Agreement is in settlement of a charge against a union, the union will submit forthwith whose signed copies of said Notice to the Regional Director who will forward thero to the employer whose employees are involved herein, for posting, the employer willing, in conspicuous places in and about the employer's plant where they shall be maintained for 60 consecutive days the date of posting.

COMPLINCE WITH NOTICE – The charged Party will comply with all the terms and provisions of said Notice.

BACKPAY The Charged Party will make whole Longinus Yen payment to him of two checks in the total amount of $3,400. Charged Party shall make statutory deductions from the first check representing backpay in the amount of $3,034. No such deductions shall be made from the second check representing interest in the amount of $336. The checks are due in the office of Region 2 by no later than Tuesday, July 2, 1996.

SCOPE OF THE AGREEMENT – This Agreement settles only the allegations in the above captioned case(s), and does not constitute a settlement of any other case(s) or matters. It does not preclude persons from filing charges, the General Counsel from prosecuting complaints, or the Board and the courts from finding violations with respect to matters which prcccde? the date of the approval of this Agreement regardless of whether such matters are known to the General Counsel or are readily discoverable. The General Counsel reserves the right to use the evidence obtained in the investigation and prosecution of the above captioned case(s) for any relevant purpose in the litigation of this or any other case(s) for any relevant purpose in the litigation of this or any other case(s), and a judge, the Board and the courts may make findings of fact and/or conclusions of law with respect to said evidence.

REFUSAL TO ISSUE COMPLAINT – In the event the Charging Party fails or refuses to become a party to this Agreement, and if the Regional Director's discrection it will effectuate the policies of the National Labor Relations Act, the Regional Director shall decline to issue a complaint herein (or a new Complaint if one has been withdrawn p????ant to the

terms of this agreement), and this Agreement shall be between the Charged Party and the undersigned Regional Director. A review of such action may be obtained pursuant to Section 102.19 of the Rules and Regulations of the Board if a request for same is filed within 14 days thereof. This Agreement is contingent upon the General Counsel sustaining the Regional Director's action in the event of a review. Approval of this Agreement by the Regional Director shall constitute withdrawal of any Complaint(s) and Notice of Hearing heretofore issued in the case, as well as any answer(s) filed in response.

PERFORMANCE – Performance by the Charged Party with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or if the Charging Party does not enter this Agreement, performance shall commence immediately upon receipt of the Charged Party of advice that no review has been requested or that the General Counsel has sustained the Regional Director.

NOTIFICATION OF COMPLIANCE – The undersigned parties to this Agreement will each notify the Regional Director in writing what steps the Charged Party has taken to comply herewith. Such notification shall be given within 5 days, and again 60 days, from the date of the approval of this Agreement. In the event the Charging Party does not enter into this Agreement, initial notice shall be given within 5 days after notification from the Regional Director that no review has been requested or that the General Counsel has sustained the Regional Director. Contingent upon compliance with the terms and provisions hereof, no further action shall be taken in this case.

NON-ADMISSION CLAUSE The sign of this settlement agreement by the Charged Party shall not constitute an

admission that the Charged Party violated the National Labor Relations Act, as alleged in the charge.

The Charged Party agrees that the Notice to Employees will be posted in English and Chinese and will be posted in its reception area.

Charged Party		Charging Party	
Pacific Culture Enterprise, Inc.		Longinus Yen	
x			
By Name and Title		By Name and Title	Date
/s/ Wong ming jin	**June 30,96**		
President	**Date**		

Recommended By:	Date	Approval By:	Date
/s/ Geoffrey Dunham	**7/1/96**	**/s/ Daniel Silverman**	**7/10/96**
Geoffrey Dunham			
Board Agent		Regional Director, Region 2	

BY HAND/ MAIL/REGISTERED MAIL/FAX

Re: Pacific Culture Enterprise, Inc., d/b/a The China Press
Longinus Yen v. The China Press
Case No. 2-CA-28359

Dear Mr. Silverman:

I **can not accept** the settlement agreement that signed by the Employer in the above-captioned matter. As The Counsel for the General Counsel Mr. Geoffrey E. Dunham gave the advised that is not provide for a reinstatement remedy and due to the objectionable content of my August 1, 1995 letter to The China Press.

The reason are as following:

(A) The Employer signed agreement that date is June 30,1996.
It is Sunday Contract- maybe voidable.

(B) The words of settlement agreement is very not clear and very difficult to read.

(C) The letter for **evidence** was **not in fairness** that **willing not to be considered contemporaneously** with it and if all letters relevant evidence is admissible, except as otherwise provided by the constitution of the Unites States, by Act of Congress, by these rules, or by other rules prescribed by the Supreme Court pursuant to statutory, Evidence which is not relevant is not admissible.
I think all sentence is void of meaning and that letter is Irrelevant Evidence Inadmissable.

(D) I admitted write many "writings" may consist of letters, words, numbers, but their equivalent fiction and poetry the totally should under The **Constitution of United States of America,**

Amendment I: "....Abridging the freedom of speech, or the press,..." to protect my right. May these writings is could not to definition that is misconduct to attacking management representatives and lose my right to reinstatement.

(E) I think, this affair is a private citizen into a public figure. The Public figures, in the Court's definition, are persons who thrust themselves " into the forefront... of public controversies" and can be said to have surrendered voluntarily some of their ordinar private rights.

July 5, 1996
Date

Very truly yours,
/s/ Longinus Yen
Longinus Yen

Geoffrey Dunham, Esq
National Labor Relations Board

Tel & Fax (718)335-8265
Beeper: (917)271-9768

United States Government
NATIONAL LABOR RELATIONA BOARD
Region 2
26 Federal plaza – Room 3614
New York, NY 10278-0104

July 1, 1996

Longinus Yen
35-30 73rd Street, Apartment 3C
Jackson Heights, New York 11372

Dear Mr. Yen:

Attached pleased find a copy of the proposed settlement agreement signed by the Employer in the above – captioned matter. As I have informed you, the agreement does not provide for a reinstatement remedy, due to objectionable content of your August 1,1995. Letter to China Press. If you do not object to the agreement, please sign and date the last page of the agreement and fax the agreement back to our office. Otherwise, pleased be advised that you have seven (7) business days from the date of this letter to present your position to the Regional Director as to why the region should not accept the settlement agreement.

Sincerely,

/s/ Geoffrey E. Dunham
Geoffrey for the General Counsel
(212) 264-0518
FAX (212) 264-8427

SETTLEMENT ARREEMENT
IN THE MATTER OF
Pacific Culture Enterprise, Inc. d/b/a China Press
Case No. 2-CA-28359

The undersigned Charged Party and the undersigned Charging Party, in settlement of the above matter and subject to the approval of the Regional Director for the National Board, HEREBY AGREE AS FOLLOWS:

POST OF NOTICE – Upon approval of this Agreement, the Charged Party will po?? Immediately in conspicuous places in and about its plant/office, including all places where notice t? employees/members are customarily posted, and maintain for 60 consectutive days from the date of posting, copies of the attached Notice made a part hereof, said Notices to be signed by a responsible official of the Charged Party and the date of actual posting to shown thereon. In the event this Agreement is in settlement of a charge against a union, the union will submit forthwith whose signed copies of said Notice to the Regional Director who will forward thero to the employer whose employees are involved herein, for posting, the employer willing, in conspicuous places in and about the employer's plant where they shall be maintained for 60 consecutive days the date of posting.

COMPLINCE WITH NOTICE – The charged Party will comply with all the terms and provisions of said Notice.

BACKPAY The Charged Party will make whole Longinus Yen payment to him of two checks in the total amount of $3,400. Charged Party shall make statutory deductions from the first check representing backpay in the amount of $3,034. No such deductions shall be made from the second check representing interest in the amount of $336. The checks are due in the office of Region 2 by no later than Tuesday, July 2, 1996.

SCOPE OF THE AGREEMENT – This Agreement settles only the allegations in the above captioned case(s), and does not constitute a settlement of any other case(s) or matters. It

does not preclude persons from filing charges, the General Counsel from prosecuting complaints, or the Board and the courts from finding violations with respect to matters which prcccde? the date of the approval of this Agreement regardless of whether such matters are known to the General Counsel or are readily discoverable. The General Counsel reserves the right to use the evidence obtained in the investigation and prosecution of the above captioned case(s) for any relevant purpose in the litigation of this or any other case(s) for any relevant purpose in the litigation of this or any other case(s), and a judge, the Board and the courts may make findings of fact and/or conclusions of law with respect to said evidence.

REFUSAL TO ISSUE COMPLAINT – In the event the Charging Party fails or refuses to become a party to this Agreement, and if the Regional Director's discrection it will effectuate the policies of the National Labor Relations Act, the Regional Director shall decline to issue a complaint herein (or a new Complaint if one has been withdrawn p????ant to the terms of this agreement), and this Agreement shall be between the Charged Party and the undersigned Regional Director. A review of such action may be obtained pursuant to Section 102.19 of the Rules and Regulations of the Board if a request for same is filed within 14 days thereof. This Agreement is contingent upon the General Counsel sustaining the Regional Director's action in the event of a review. Approval of this Agreement by the Regional Director shall constitute withdrawal of any Complaint(s) and Notice of Hearing heretofore issued in the case, as well as any answer(s) filed in response.

PERFORMANCE – Performance by the Charged Party with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or if the Charging Party does not enter this

Agreement, performance shall commence immediately upon receipt of the Charged Party of advice that no review has been requested or that the General Counsel has sustained the Regional Director.

NOTIFICATION OF COMPLIANCE – The undersigned parties to this Agreement will each notify the Regional Director in writing what steps the Charged Party has taken to comply herewith. Such notification shall be given within 5 days, and again 60 days, from the date of the approval of this Agreement. In the event the Charging Party does not enter into this Agreement, initial notice shall be given within **5** days after notification **from** the Regional Director that no review has been requested **or** that the General Counsel has sustained the Regional Director. Contingent upon compliance with the terms and provisions hereof, no further action shall be taken in this case.

NON-ADMISSION CLAUSE The sign of this settlement agreement by the Charged Party shall not constitute an admission that the Charged Party violated the National Labor Relations Act, as alleged in the charge.

The Charged Party agrees that the Notice to Employees will be posted in English and Chinese and will be posted in its reception area.

Charged Party		Charging Party	
Pacific Culture Enterprise, Inc.		Longinus Yen	
x			
By Name and Title		By Name and Title	Date
/s/ Wong ming jin	**June 30, 96**		
President	**Date**		
Recommended By:	Date	Approval By:	Date
Geoffrey Dunham			
Board Agent		Regional Director, Region 2	

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 2
PACIFIC CULTURE ENTERPRISES,INC.
d/b/a The China Press
and **Case No. 2-CA-28359**
LONGINUS YEN, An individual

Complaint and Notice of Hearing

Longinus Yen, an individual, herein called Yen, has charged that Pacific Culture Enterprises Inc. d/b/a China Press, herein called Respondent, has been engaging in unfair labor practices as set forth and defined in the National Labor Relations Act, 29 U.S.C. Section 151 et seq., herein called the Act. Based thereon the General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and section 102.15 of the Rules and Regulations of the National Labor Relations Board, Series 8, as amended, issues this Complaint and Notice of Hearing and alleges as follows:

1. The charge in this proceeding was filed by Longinus Yen on April 18,1995, and a copy thereof was served by certified mail on Respondent on or about April 27, 1995.

2. (a) At all material times, Respondent, a corporation with an office and place of business in New York, New York, has been engaged in the operation and management of a newspaper.

(b) During the calendar year ending December 31, 1994, Respondent in conducting its business operations described above in paragraph 2(a) derived gross revenues in excess of $200,000, subscribed to various interstate news service, including the Associated Press, published various

nationally syndicated features, and advertised various nationally sold products.

3. Respondent is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Sections 2(2),(6) and (7) of the Act.

4. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent, acting on its behalf.

Fei Man Hung	President
Dei Kuai Young	General Manager
Wei Hung Chen	Manager

5.(a) In or around April 1995, Respondent's employee Yen engaged in concert activities with other employees for the purposes of mutual aid and protection, by meeting with other employees to discuss terms and conditions of employment, including Respondent's policies regarding advertising quotas.

(b) In or around April 17 1995, respondent's employee Yen commenced an organizational campaign among Respondent's employees for the purpose of forming a labor organization.

(c) On or around April 17,1995, during a meeting at the facility convened by Respondent, Yen voiced concerted complaints to respondent about terms and conditions of employment, including but not limited to the Respondent's policies regarding advertising quotas.

6. (a) On or about April 17, 1995, Respondent terminated Yen.

(b) At All times since April 17, 1995, Respondent has failed and refused and continues to fail and refuse to reinstate or offer to reinstate Yen to his former position of employment or to a substantially equivalent position of employment.

7. Respondent engaged in the conduct described above in subparagraph 6 because Yen engaged in the Union activities and the protected concerted activities as described above in paragraph 5 and to discourage employees from engaging in these activities.

8. By the conduct described above in paragraphs 6 and 7, Respondent has been interfering with, restraining with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act.

9. By the conduct described above in paragraph 6 and 7, Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

10. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2 (6)and (7) of the Act.

PLEASE TAKE NOTICE that commencing at 9:30 A.M. on the 29th day of January, 1996, and on **consecutive** days thereafter, a **hearing** will be conducted in the Mary Walker Hearing Room, at 26 Federal Plaza, Room 3614, New York, New York, **before a duly designated Administrative Law Judge** of the Board, on the allegations set forth in the above Complaint, at which time and place you will have the right to appear in person, or otherwise, and give **testimony.**

You are further notified that, pursuant to 102.20 and 102.21 of the Board's Rules and Regulations, Series 8, as amended, Respondent shall file with the undersigned, acting in this matter as an agent of the National Labor Relations Board, an original and four (4) copies of an answer to said Complaint within fourteen (14) days the service thereof, and that, unless Respondent does so, all of the allegations in the Complaint **shall be deemed to be admitted to be true** and shall be so found by the Board. You are also notified that pursuant to said Rules and Regulations, Respondent shall serve a copy of its answer on each of the parties.

Form NLRB-4338, Notice, and Form NLRB-4668, Statement of Standard Procedure in **Formal Hearing** Held Before the National Labor Regions Board in Unfair Labor Practice Cases, are attached.

Dated at New York, New York,
August 9, 1995

/s/Elbert F. Tellem
Acting Regional Director
National Labor Relations Board
Region 2
26 Federal Plaza, Room 3614
New York, NewYork10278-0104

New York Unemployment Insurance Appeal Board.
Administrative Law Judge section

ONE MAIN STREET, 2nd FLOOR
BROOKLYN, NY 11201
BROOKLYN (718 - 797-7156)

DONALD STICKLOR
CHIEF A .L . J.

CAROL EULER
SENIOR A . L. J.

IN THE MTTER OF :
LONGINUS YEN
35-30 73 ST 3C
JACKSON HEIGHTS
NY 11372-0000

CASE#: 095-21385
SSA/ER # : 082-62-2153

Request Date: JUNE 19, 1995
NYS Dept. of Labor
Local Insurance Office: 541

OTHER PARTIES:

PACIFIC CULTURE ENTERPRISE
D/B/A CHINA PRESS
15 MERCER ST.
NY, NY 10013-0000

Parties Present:
CLAIMANT
EMPLOYER

THE LAW FIRM OF HUGH MO, P.C.
750 LEXINGTON AVE 15 FL
NEW YORK, NY 10022-0000

PURPOSE OF HEARING :
To determine EMPLOYER'S
Loss of employment through misconduct.
Employer's objection to claimant's entitlement.

Findings of Fact: A hearing was held at which the claimant and employer appeared and testified.

By initial determination the claimant was found eligible to receive benefits effective April 17, 1995. The employer objected that the claimant should be disqualified due to loss of employment through misconduct.

The claimant worked as a business reporter for a newspaper from September 1990 until a last day of work on April 17, 1995. The claimant earned commissions based on the amount of advertising that he obtained for the paper. In all the years of the claimant's employment the claimant had not met with his assigned quotas for advertising although the claimant exerted his best efforts. On occasion the claimant had been told that he must work harder to meet his assigned goals. The employer announced new regulations regarding advertising quotas. The claimant opposing them. The claimant was fired, for failing to meet production quotas in advertising.

OPINION: The credible evidence establishes that the claimant was fired. The direct testimony of the employer fails to show that the claimant did not exert his best efforts in order to attempt to meet production goals. The claimant's direct testimony establishes that he did exert his best efforts to meet production goals. Since the employer's testimony establishes that the claimant was fired for failing to sell as much advertising as the employer believed he could, and since the testimony establishes that the claimant exerted his best efforts to sell as much advertising as he could, it is concluded that the claimant's employment ended due to poor performance of his job responsibilities while an employer may discharge an employee for any lawful reason poor performance of one's job responsibility is not considered to be misconduct such as disqualifies an individual from receiving unemployment insurance benefits.

DECISION: The employer's objection is overruled. The initial determination of eligibility is sustained.

JULY 11 , 95
DATE

/s/ JOSEPH WOLFERMANN
Administrative Law Judge

EXCERPTS (1) FROM

SUMMARY OF STANDARD PROCEDURES
IN FORMAL HEARINGS HELD
BEFORE THE NATIONAL LABOR RELATIONS BOARD
IN
UNFAIR LABOR PRACTICE PROCEEDINGS PURSUANT
TO
SECTION 10
OF THE NATIONAL LABOR RELATIONS ACT

The hearing will be conducted by an administrative law judge of the National Labor Relations Board who will preside at the hearing as an independent, impartial finder of the facts and applicable law whose decision in due time will be served on the parties. The offices of the administrative law judges are located in Washington. D.C. ; San Francisco, California; New York, New York; and Atlanta, Georgia.

At the date, hour, and place for which the hearing is set, the administrative law judge, upon the joint request of the parties, will conduct a "prehearing" conference, prior to or shortly after the opening of the hearing, to ensure that the issues are sharp and clear cut; or the administrative law judge may independently conduct such a conference. The administrative law judge will preside at such conference, but may, if the occasion arises, permit the parties to engage in private discussions. The conference will not necessarily be recorded, but it will be that the labors of the conference will be evinced in the ultimate record, for example, in the form of statement of position. Stipulations, and concessions. Except under unusual circumstances, the administrative law judge conducting the prehearing conference will be the one who will conduct the hearing; and it is expected that the formal hearing will commerce or be resumed immediately upon completion of the prehearing conference. **No prejudice** will result to any

party unwilling to participate in or make stipulations or concessions during any prehearing conference.

(This is not to be construed as preventing the parties from meeting earlier for similar purposes. To the contrary, the parties are encouraged to prior to the time set for hearing in an effort to narrow the issues.)

Parties may be represented by an attorney or other representative and present evidence relevant to the issues All parties appearing before this hearing who have or whose witness have handicaps falling within the provisions of Sections 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100,603. And who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.603, should notify the Regional Director as soon as possible and request the necessary assistance.

An official reporter will make the only official transcript of the proceedings, and all citations in briefs and argument must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the administrative law judge for approval.

All matter that is spoken in the hearing room while the hearing is in session will be recorded by the official reporter unless the administrative law judge specifically directs off-the-record discussion. In the event that any party wishes to make off-the-record statements, a request to go off the record should be directed to the administrative law judge and not to the official reporter.

Statement of reasons in support of motions and objections should be specific and concise. The administrative

law judge will allow an automatic exception to all adverse rulings and, upon appropriate order, an **objection** and exception will be permitted to stand to an entire line of questioning.

All exhibits offered in evidence shall be in duplicate. Copies of exhibits should be supplied to the administrative law judge and other parties at the time the exhibits are offered in evidence. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the administrative law judge before the close of hearing. In the event such copy is not submitted, and the filing has not been waived by the administrative law judge, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

Any party shall be entitled, on request, to a reasonable period at the closed of the hearing for oral argument which shall be included in the transcript of the hearing. In the absence of a request, the administrative law judge may ask for oral argument it, at the close of the hearing, it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.

Any party shall be entitled, on request made before the close of the hearing, to file a brief or proposed findings and conclusions, or both, with the administrative law judge who will fix the time for such filing. Any such filing submitted shall be double-spaced on 8 ½ by 11 inch paper.

Attention of the parties is called to the following requirements laid down in Section 102.42 of the Board's Rules and Regulations, with respect to the procedure to be followed before the proceeding is transferred to the Board.

No request for an extension of time within which to submit brief or proposed findings to the administrative law judge will be considered unless received by the Chief Administrative Law Judge in Washington. D.C.(or, in cases under the San Francisco, California branch office, the Deputy Chief Administrative Law Judge; or, in cases under the branch offices in New York, New York, and Atlanta, Georgia, the Associate Administrative Law judge) **at least 3 days prior** to the expiration of the time fixed for the submission of such documents. Notice of request for such extension of time **must be** served simultaneously on all other parties, and proof of such service furnished to the Chief Administrative Law Judge. Deputy Chief Administrative Law Judge, or the Associate Chief Administrative Law Judge, as the case may be. A quicker response is assured if the moving party secures the other parties and includes such in the request. All briefs or proposed findings filed with the administrative law judge must be submitted in triplicate, and may be printed or otherwise legibly duplicated with serviced on the other parties.

In due course the administrative law judge will prepare and file with the Board a decision in this proceeding, and will cause a copy thereof to serviced on **each of the parties.** Upon filing of this decision, the Board will enter an order transferring this case to itself, and will serve copies of the order, setting forth the date of such transfer, on all parties. At that point, the administrative law judge's official connection with the case will cease.

The procedure to be followed before the Board from that the point forward, with respect to the filing of exceptions to the administrative law judge's decision, the submission of supporting brief, requests for a oral argument before the Board, and related matters, is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions

will be served on the parties together with the order transferring the case to the Board.

Adjustments or settlement consistent with the policies of the Act reduce Government expenditures and promote amity in labor relations. If adjustment appears possible, the administrative law judge may suggest discussions between the parties or, on request, **will afford reasonable opportunity** during the hearing for such discussions.

NATIONAL LABOR RELATIONS ACT.
Section 1, 8(d) Collective Bargaining.

Collective **bargaining** is defined in Act. Section 8 (d) requires an employer and representative of its employees to meet at reasonable times, to confer in good faith about certain matters, and to put into a writing **any** agreement reached if requested by either party. The parties **must** confer in good faith with respect to wages hours, and other terms or conditions of employment, the negotiation of an agreement, or **any** question arising under an agreement.

These obligations are imposed equally on the employer and the representative of its employers. It is an unfair Labor Practice for either party to **refuse to bargain** collectively with the other. The obligation does not, however, compel either party to agree to a proposal by the order, not does it require either party to make a **concession** to the other.

If the strike was caused by the unfair labor practice of the **employer**, however, the striker are classified as unfair practice strikers and their status is **not** affected by failure to follow the required procedure.

CODE OF FEDERAL REGULATION, TITLE 29,

Subtitle B – Regulations Relating to Labor:
Chapter I – National Labor Relations Board.
Section 102.25: Ruling on Motions.(in relevant part)

An administrative law judge designated by the chief administrative law judge, by the associate chief judge in San Francisco, California, by the associate chief judge in New York, New York, or by the associated chief judge in Atlanta, Georgia, as the case may be, shall rule on all **prehearing** motions, and all such rulings and orders shall issued in writing and a copy served on each of the parties.

Section 102.18: Withdrawal.

Any such complaint may be withdrawn **before** the hearing by the regional director on his own motion.

Section 101.9: Settlement after issuance of complaint.(in relevant part)

(b)(2) In some cases, however, the Regional Director, who has authority to withdraw the complaint **before** the hearing (102.18). may conclude that an informal settlement agreement of the type described in **101.7** is appropriate. Such agreement is not subject to approval by the board and does not provide for the Board order. It provides for the withdrawal of the complaint.

Section 101.7: Settlement.(in relevant)

Before any complaint is issued or other formal action taken, the Regional Director affords an opportunity to all parties for the submission and consideration of facts, argument, offers of settlement, or proposals of adjustment,

except where time, the nature of the proceeding, and the public interest **do not permit.**

Section 101.9: Settlement after issuance of complaint.(in relevant part)

(c)(1) If after issuance of a complaint but before opening of the hearing, the charging party will not join in a settlement tentatively agreement upon by the Regional Director, the respondent, and any other parties whose consent may be required, the **Regional Director** serves a copy of the proposed settlement agreement on the charging party with a brief written statement of the reasons for proposing its approval. Within **7** days after service of these documents, the charging party may file with the **Regional Director** a written statement. Such objections will be considered by the **Regional Director** in determining whether to approve the proposed settlement. If the settlement is approved by the **Regional Director** notwithstanding the objections, the charging party is so informed and provided a brief written statement of the reasons for the approval.

(d)(1) If the settlement occurs after the opening of the hearing and before issuance of a administrative law judge's decision and there is an **all party informal settlement**, the request for withdrawal of the complaint **must be submitted** to the **administrative law judge for approval**.

New York State Labor Law.
Article 6, Payment of Wages.
Section 191-c. Payment of a sales commission.

(1) When a contract between a principal and a sales representative after terminated, all earned commissions shall be paid within five business days after termination or within five business days after they become due in the case of earned commission not due when the contract is terminated.

(3) A principal who fails to comply with the provisions of this section concerning timely payment of all earned commissions shall be liable to the sales representative in a civil action for **double damages**. The prevailing party in any such action shall be entitled to an award of reasonable attorney's fees, court costs, and disbursements.

Section 193. Deductions from wages.

(1) No employer shall make any deduction from the wage
of an employee. Except deductions which:

a. are made in accordance with the provisions of any law or any rule or regulation issued by any government agency; or

b. are expressly authorized in writing by the employee and are for the benefit of the employee; provided that such authorization is kept on file on the employer's premises. Such authorized deductions shall be limited to payments for insurance premiums, pension or health and welfare benefits, contributions to charitable organizations, payments for United States bond, payments for dues or assessments to a labor organization, and similar payments for the benefit of the employee.

(2) No employer shall make any charge against wages, or require an employee to make any payment by separate transaction unless such charge or payment is permitted as deduction from wages under the provisions of subdivision one of this action.

Section 197. Civil penalty.

Any employer who fails to pay the wages of his employee or shall differentiate in rate of pay because of sex, as provided in this article, shall forfeit to the people of the state the Sum of fifty dollars for each such failure, to be recovered by the commissioner in civil action.

Section 198-a. Criminal penalties .

Section 198-b. "Kick-back" of Wages prohibited.

EXCERPTS (2) FROM

Jaw – Sy Chen, Ph. D.
NYS Licensed psychologist
56-39 195th Street
Fresh Meadows, NY 11365
Telephone (718) 357-9050

Dr. George C. K. Liu
59-15 94th Street # D-6
Rego Park, NY 11373

Re: Mr. Longinus Yen
Date of 1st Visit: 10/13/1995
Date of initial report: 1/20/1996
Date of Progress report: 4/19/1996

Dear Dr. Liu:

INITIAL PSYCHOLOGICAL EVALUATION & PROGRESS REPORT

Test Administered:

(1) Diagnosis Based on Diagnostic & Statistical Manual of Mental Disorder (DSM - IV)
(2) Beck Depression Scales
(3) Clinical Interview

This psychological Evaluation report is requested by Mr. Longinus Yen, who resides at 35-30 73 Street #3C, Jackson Heights, NY 11372. The Major complaints included persistent fear of life threatening, worry about finances, insomnia, nightmares, pronounced memory problems, excessive anxiety and depression because the patient was unlawfully discharged from duty by The China Press on April 17, 1995.

The evaluation and treatments that followed were held at my office, 56-39 195 Street, Fresh Meadows, New York

11365. In his first visit (10/13/95), Mr. Yen stated that he was employed as a reporter by The China Press since September 3, 1990. He was fired on April 18,1995. Mr. Yen said " I find my daily life has been shattered. I am financially broken. I am afraid I will be hunted. I have psychological handicaps to find a new job." He often felt extremely tense. At times, he complained difficulty falling asleep; he would be unable to get back to sleep. He woke up one or two times a night between 1 to 3 o'clock. He experienced accelerated heart rate, shortness of breath, and numbness of body.

When asked about the specific events of the discharge and its aftermath, he was very disturbed and angry. He said he was fired because he tried to organize a worker union to promote workers' right in The China Press. Immediately after his dismissal, he was frequently threatened by phones or visited by some one who came to his house to warn him. He was told " You will be rehired if you apologize and admit making mistakes. You are a traitor, one fighting against Chinese people. You will be brutally killed in no time." Then, it happened that his employer even took measure to stop paying him unemployment benefit. Mr. Yen stated that he was a good reporter helping The China Press bring in a lot of business advertisements but instead he was accused of frightened. He felt totally humiliated. Thus he developed a marked withdrawal from people and persistent avoidance from activities and situations that provoked recollections. He was so easily irritated and lost his temper.

1. A closer examination of specific symptoms based on DSM-IV suggested a moderate **post-traumatic stress disorder** due to abrupt discharge from his work and subsequent intimidation. As has been noted, Mr. Yen's included being fearful, having insomnia and nightmares, experiencing tiredness, shortness of breath, and numbness of body, feeling of anger and humiliation. He has difficulty

concentrating and remembering things just heard or learned. He constantly worried about his future finances. He felt helpless and become detached from other people. Furthermore, he had to push himself very hard to cope with daily activities. His relationships with his family were deteriorating.

2. Based on the findings of Beck Depression Scale (BDI = 13), Mr. Yen has revealed mild sign of mood disturbance. He felt tired, worthless, punished, discouraged about the future, slightly more irritated, less interested in other people. Other symptoms included insomnia, indecision, forgetting and inability to thinh straight. He was helpless but he believed he still had hopes. There was no evidence of hallucinations or delusions. Nor did he have any idea of killing himself.

Mental Status: Mr. Yen had no previous history of mental disorder nor drug / alcohol abuse. He was a competent reporter, In appears to me he is proud of his work. He is cooperative. Response time is good. But his mood is depressed and anxious. He complain having sleep problems and nightmares. Sometime he loses his concentration. He tries hard to hold himself together. Anyway, his insight is good. Judgement is clear. There is no evidence of psychotic symptoms or violent behaviors.

Diagnosis: **Moderate post-traumatic stress disorder with mild emotional disturbance**

Recommended Treatment: **Cognitive – behavioral therapy**

1. Relaxation / meditation.
2. Desensitization training.
3. Overcoming automatic negative cognition and delineating specific stylistic errors in thinking.
4. Assertion and social skills learning.

5. Formulating a life plan.

Conclusion

1. Mr. Longinus Yen has a moderate post-trauma stress disorder with mild mood disturbance which is causally related to the above mentioned losses of job and reputation.
2. Since the patient is partially disabled, it would be difficult for him to work safely and function socially at the present time.
3. The patient has suffered from significant emotional trauma and needs to continue the psychotherapy at 1 or 2 times monthly.

3. Progress and Up-date Report

Mr. Yen initially exhibited persistent fear of being slain, worry about finances, being tense, insomnia, nightmares, lack of concentration, excessive anxiety and depressed mood. As already noted, he was started with cognitive-behavioral therapy consisting of relaxation, desensitization, and social skill learning. It was observed that the patient quickly made a significant improvement in the area of fear reduction and emotional stability. However, there was postponed. He felt very tense afterward. This new pressure seemed to provoke his deep fear and disruption of daily activity functioning. On the whole, the effectiveness and maintenance of therapy gains are good.

Very truly yours,

/s/ Jaw-sy Chen, Ph. D.
NYS Licensed Psychologist

EXCERPTS (3) FROM

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

PACIFIC CULTURE ENTERPRISES, D/B/A/ CHINA PRESS	
And	**Case No. 2-CA-28359**
LONGINUS YEN, An individual	

ORDER RESCHEDULING HEARING

IT IS HEREBY ORDERED That the hearing in the above-entitled matter be and the same hereby is rescheduled from January 29, 1996 to May 14, 1996, at 9:30 A.M., and any adjourned date until completed, at 26 Federal Plaza, Room 3614, New York, New York.

January 12, 1996
Date

/s/ Daniel Silverman
Regional Director, Region
National Labor relations
Board

EXCERPTS (4) FROM

United States Government
NATIONAL LABOR RELATIONA BOARD
Region 2
26 Federal Plaza – Room 3614
New York, NY 10278-0104

April 18,1996

Jimmy Yen
35-30 73rd Street, Apt. 3C
Jackson Heights, New York 11372

Re: China Press
Case No. 2-CA-28359

Dear Mr. Yen:

I am the attorney handling your case against China Press, which is scheduled for trail on Tuesday, May 14. It is VERY IMPORTANT that you contact me immediately to prepare for your trail. My telephone number is (212) 264-0518. If I am not in leave a message on my voice mail with your telephone number and the best time to call you. I cannot proceed to trail without your cooperation.

Sincerely,

/s/ Geoffrey E. Dunham
Counsel for the General Counsel

EXCERPTS (5) FROM

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

PACIFIC CULTURE ENTERPRISES, D/B/A/ CHINA PRESS	
And	**Case No. 2-CA-28359**
LONGINUS YEN, An individual	

ORDER RESCHEDULING HEARING

IT IS HEREBY ORDERED That the hearing in the above-entitled matter be and the same hereby is rescheduled from May 14, 1996 to July 2, 1996, at 9:30 A.M., and any adjourned date until completed, at 26 Federal Plaza, Room 3614, New York, New York.

May 7, 1996
Date

/s/ Elbert F. Tellem
Acting Regional Director, Region 2
National Labor relations Board

EXCERPTS (6) FROM

LONGINUS YEN ANNOUNCEMENT

(Mixed in Chinese and English language)

1. **To : The China Press. (212) 274-0688, 7, 6**
   HUGH H. MO (212) 750-9750
   NLRB Mr. Geoffery E. Dunham
   (212) 264-8427

2. **Date : 7 / 1 / 1996 (One day before the Hearing.)**

3. **Announcements;**
   If there is no settlement, the case will be taken to Court.
   If there is a settlement, but I did not in volunteer to it and the hearing is waived, I will appeal to D.C.
   Petition to President of U.S.
   Petition to Congress for a redress of grievances.
   Oppose any in the "Black Box Procedural"
   First Amendment's rights to free speech.
   .....

4. **Nine people let there be American free speech.(An article from Chinese Newspaper that date is June 30, 1996.)**

EXCERPTS (7) FROM

A receptionist there
To sign a paper confirming
I came to the court

JULY 2, 1996, 9:30 A.M. LONGINUS YEN
at 26 Fed. Plaza 36 FL. Waiting the Court(trail)
The Place is National Labor Relations Board.

/s/ ELEANOR
Receptionist

EXCERPTS (8) FROM

United States Government
NATIONAL LABOR RELATIONA BOARD
Region 2
26 Federal Plaza - 3614
New York, NY 10278-0104

November 6, 1996

Dear Mr. Pin-Wen:

Satisfactory evidence having been submitted of compliance with the Settlement Agreement in the above-captioned case, insofar as it requires certain affirmative action to be taken, and no evidence having been presented of the failure to comply with the requirement for refraining from engaging in certain conduct, the instant case is hereby closed and will remain closed, conditioned upon continued compliance.

You are cautioned that subsequent violations of the National Labor Relations Act may become the basis for further proceedings in the instant case despite its formal closing.

Date : November 6, 1996.

Very truly yours,

/s/ Daniel Silverman
Regional Director

EXCERPTS (9) FROM

United States Government
NATIONAL LABOR RELATIONA BOARD
Region 2
26 Federal Plaza - 3614
New York, NY 10278-0104

Dear Mr. Yen :

Enclosed please find the checks due you pursuant to a unilateral settlement agreement approved by the Regional Director.

Date : October 15, 1997

very truly yours,
/s/ Esther Morles
Board Agent
(212) 264-5738

EXCERPTS (10) FROM

United States Government
NATIONAL LABOR RELATIONA BOARD
OFFICE OF THE GENERAL COUNSEL
WASHINGTON, D.C. 20570

Dear Mr. Yen :

This is further response to your letter October 16, 1997, regarding the above-Captioned case.

It appears that On July 20, **1996**, the Region 2 approved a Unilateral settlement agreement.

You appealed the unilateral settlement approved by the Regional Director, and your appeal was denied.

The Employer submitted to the Region two checks made payable to you pursuant to the term of the unilateral settlement agreement. Due to circumstances beyond the Region's control, the checks were mailed to you in early October **1997.**

You returned the checks to the Region, and on Oct 15, the region again mailed the checks to you. You again refused to accept the checks.

On **November 5, 1997**, the region mailed you a letter advising you that the checks were returned to the Employer. If you wish to accept the checks now, please contact the Region.

I trust that the foregoing is responsive to your inquiry. If I can be of any further assistance to you in this or any other matter, please do not hesitate to contact me.

Date : November 13,1997

Sincerely,

/s/ Celeste J. Mattina
Assistant General Counsel